

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)

Against:)

MICHAEL ALAN SWEENEY, M.D.)

File No. 12-2007-181519

Physician's and Surgeon's)

Certificate No. G 61169)

Respondent)

DECISION

The attached **Stipulated Settlement and Disciplinary Order** is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 28, 2009.

IT IS SO ORDERED July 30, 2009.

MEDICAL BOARD OF CALIFORNIA

By: 

Hedy Chang
Chair, Panel B

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 BRENDA P. REYES, State Bar No. 129718
Deputy Attorney General
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455 Golden Gate Avenue, Suite 11000
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7 Attorneys for Complainant

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

13 **MICHAEL ALAN SWEENEY, M.D.**
14 **401 Bicentennial Way**
Santa Rosa, California 95403

15 Physician's and Surgeon's Certificate
16 No. G 61169

17 Respondent.

Case No. 12-2007-181519

OAH No. 2009030160

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

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19 In the interest of a prompt and speedy settlement of this matter, consistent with the
20 public interest and the responsibility of the Medical Board of California, Department of
21 Consumer Affairs ("Medical Board" or "Board"), the parties agree to the following Stipulated
22 Settlement and Disciplinary Order which will be submitted to the Board for its approval and
23 adoption as the final disposition of the Accusation.

24 **PARTIES**

25 1. Complainant Barbara Johnston is the Executive Director of the Medical
26 Board. She brought this action solely in her official capacity and is represented in this matter by
27 Edmund G. Brown Jr., Attorney General of the State of California, by Brenda P. Reyes, Deputy
28 Attorney General.

2. Respondent Michael Alan Sweeney, M.D. ("respondent") is represented in this proceeding by John Fleer, Esq., whose address is 1850 Mt. Diablo Blvd., Suite 120, Walnut Creek, California 94596.

3. On August 24, 1987, the Board issued Physician's and Surgeon's Certificate No. G 61169 to respondent Michael Alan Sweeney, M.D. Unless renewed, the certificate will expire on February 28, 2011.

JURISDICTION

4. The Board filed an Accusation in Case No. 12-2007-181519 on February 20, 2008, and this Accusation is currently pending against respondent. The Accusation, together with all other statutorily required documents, was duly served on respondent in accordance with the California Administrative Procedure Act and respondent timely filed a Notice of Defense contesting the Accusation. A copy of the Accusation is attached as Exhibit A and is incorporated in this document by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and discussed with his counsel the nature of the charges and allegations in the Accusation and the effects of this Stipulated Settlement and Disciplinary Order (hereinafter “Stipulation”).

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation, the right to be represented by counsel at his own expense, the right to confront and cross-examine the witnesses against him, the right to present evidence and to testify on his own behalf, the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to reconsideration and court review of an adverse decision, and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **DISCIPLINARY ORDER**

2 **A. PUBLIC REPRIMAND**

3 IT IS HEREBY ORDERED that respondent Michael Alan Sweeney, M.D.,
4 Physician and Surgeon's Certificate No. G 61169, shall be and hereby is publicly reprimanded
5 pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This
6 public reprimand, which is issued in connection with respondent's treatment of patient J.L. as set
7 forth in Accusation No. 12-2007-181519, is as follows:

8 You failed to follow up and to consider possible cardiac etiologies
9 and to do further cardiac work up when treating patient J.L.'s complaints
10 of chest pain on December 30, 2004, and January 3 and 6, 2005, following
11 which the patient suffered an acute myocardial infarction on January 11,
12 2005, as is more fully described in Accusation No. 12-2007-181519.

13 **B. CLINICAL TRAINING PROGRAM**

14 Within 60 calendar days of the effective date of this Decision, respondent shall
15 enroll in a clinical training or educational program equivalent to the Physician Assessment and
16 Clinical Education Program (PACE) offered at the University of California - San Diego School
17 of Medicine ("Program").

18 The Program shall consist of a Comprehensive Assessment program comprised of
19 a two-day assessment of respondent's physical and mental health; basic clinical and
20 communication skills common to all clinicians; and medical knowledge, skill and judgment
21 pertaining to respondent's specialty or sub-specialty, and at minimum, a 40 hour program of
22 clinical education in the area of practice in which respondent was alleged to be deficient and
23 which takes into account data obtained from the assessment, Decision, Accusation, and any other
24 information that the Board or its designee deems relevant. Respondent shall pay all expenses
25 associated with the clinical training program.

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1 Based on respondent's performance and test results in the assessment and clinical
2 education, the Program will advise the Board or its designee of its recommendation(s) for the
3 scope and length of any additional educational or clinical training, treatment for any medical
4 condition, treatment for any psychological condition, or anything else affecting respondent's
5 practice of medicine. Respondent shall comply with Program recommendations.

6 At the completion of any additional educational or clinical training, respondent
7 shall submit to and pass an examination. The Program's determination whether or not respondent
8 passed the examination or successfully completed the Program shall be binding.

9 Respondent shall complete the Program not later than six months after
10 respondent's initial enrollment unless the Board or its designee agrees in writing to a later time
11 for completion.


12 Failure to participate in and complete successfully all phases of the Clinical
13 Training Program outlined above shall constitute unprofessional conduct and grounds for further
14 disciplinary action.

15 16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and,
18 having the benefit of counsel, enter into it freely, voluntarily, intelligently, and with full
19 knowledge of its force and effect on my Physician and Surgeon's Certificate No. G 61169. I
20 fully understand that, after signing this Stipulation, I may not withdraw from it, that it will be
21 submitted to the Medical Board for its consideration, and that the Board shall have a reasonable
22 period of time to consider and act on the Stipulation after receiving it. By entering into this
23 Stipulation, I fully understand that, upon formal acceptance by the Board, I will be publicly
24 reprimanded by the Board and will be required to comply with all of the terms and conditions of
25 the Disciplinary Order set forth above. I also fully understand that any failure to comply with the
26 terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional
27 conduct and will subject my Physician and Surgeon's Certificate No. G 61169 to further
28 disciplinary action.

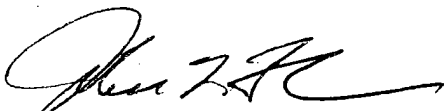
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DATED: May 7, 2009


MICHAEL ALAN SWEENEY, M.D.
Respondent

I have read and fully discussed with respondent, Michael Alan Sweeney, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: May 11, 2009



JOHN L. FLEER, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California, Department of Consumer Affairs.

DATED: May 19, 2009

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO
Supervising Deputy Attorney General


BRENDA P. REYES
Deputy Attorney General

Attorneys for Complainant

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Exhibit A:
Accusation Case No. 12-2007-181519

ORIGINAL

FILED

STATE OF CALIFORNIA

MEDICAL BOARD OF CALIFORNIA

SACRAMENTO Feb. 20, 2008

BY Brenda Allen ANALYST

EDMUND G. BROWN JR., Attorney General
of the State of California

JOSE R. GUERRERO

Supervising Deputy Attorney General

VIVIEN H. HARA, State Bar No. 84589

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 12 2007 181519

MICHAEL ALAN SWEENEY, M.D.

401 Bicentennial Way

Santa Rosa, CA 95403

ACCUSATION

Physician and Surgeon's Certificate No. G 61169

Respondent.

Complainant alleges:

PARTIES

1. Barbara Johnston (Complainant) brings this Accusation solely in her
official capacity as the Executive Director of the Medical Board of California.

2. On or about August 24, 1987, the Medical Board of California issued
Physician's and Surgeon's Certificate Number G 61169 to Michael Alan Sweeney, M.D.
("respondent"). The Physician and Surgeon's Certificate was in full force and effect at all times
relevant to the charges brought herein and will expire on February 28, 2009, unless renewed.

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"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate."

CAUSES FOR DISCIPLINE

(Patient J.L.)²

(Gross Negligence/Repeated Negligent Acts/Incompetence)

7. Respondent is subject to disciplinary action under Section 2234(b) and/or (c) and/or (d), in that he was grossly negligent and/or repeatedly negligent and/or incompetent in

2. Patient's names are abbreviated to protect privacy.

1 the care of Patient J.L. The circumstances are as follows:

2 A. At all times relevant to the charges herein, respondent was practicing as a
3 family practitioner in the Department of Family Medicine, Kaiser Permanente Medical Center, in
4 Santa Rosa, California.

5 B. At all relevant times, Patient J.L. was a 57 year old female with a history
6 significant for breast cancer.

7 C. On December 20, 2004, the patient was seen by Dr. McLean for
8 complaints of chest pains since Thanksgiving. J.L. was diagnosed with chest pain,
9 gastroesophageal reflex disease (GERD), and hypercholesterolemia (untreated). Dr. McLean
10 ordered an EKG, which showed normal sinus rhythm with lateral st-t wave abnormalities, but no
11 acute changes. J.L. was prescribed Prilosec³, 20 mg., lovastatin⁴, 20 mg., and a baby aspirin
12 each day after a few days, if tolerated. A cardiac stress test was ordered for January 21, 2005,
13 and the patient was instructed to go to the emergency room (ER) if shortness of breath
14 developed. She was given an appointment with respondent, her primary care physician, a week
15 later.

16 D. On December 30, 2004, J.L. was seen by respondent. She complained of
17 worsening symptoms, including the burning sensation after eating now feeling sharp, like
18 swallowing glass, loss of sleep, an inability to lie flat, and pain radiating down her right arm. Her
19 laboratory test results from a Complete Blood Count (CBC) conducted on December 20, 2004
20 indicated elevated blood sugar as well as elevated cholesterol. Respondent diagnosed GERD
21 and increased J.L.'s Prilosec to 40 mg, continued her on lovastatin, and confirmed the cardiac
22 stress test appointment for January 21, 2005.

23 E. J.L. returned to respondent on January 3, 2005, scared and complaining of
24 massive chest pain. Respondent noted that J.L.'s chest was tender on palpation. Respondent
25 _____

26 3. Prilosec is a trade name for omeprazole, which inhibits gastric acid secretion. It is used
27 in the treatment of duodenal ulcer and is a dangerous drug under Bus. & Prof. Code §4022.

28 4. Lovastatin is a cholesterol-lowering agent. It is a dangerous drug under Bus. & Prof.
Code §4022.

1 diagnosed chest wall pain with GERD. He lowered the dosage of Prilosec to 20 mg. and
2 recommended Gaviscon⁵, *prn*, since the patient said it was helping her more than the Prilosec.
3 He prescribed Darvocet⁶ for the pain and Flexeril⁷, a muscle relaxant, and additionally, he
4 injected J.L. with Toradol⁸ for the pain. He did no further cardiac work up.

5 F. J.L. returned to see respondent on January 6, 2005 and indicated that she
6 was in less pain and that the Flexeril, was helping. Her physical examination once again revealed
7 that her chest wall was tender. Respondent prescribed morphine sulfate⁹ and Relafen¹⁰ 75 mg.
8 for the pain and continued the Prilosec, Darvocet, and Flexeril. He did no further cardiac work
9 up.

10 G. On January 11, 2005, J.L. presented to the emergency room at Kaiser
11 Santa Rosa with sharp substernal chest pain with pressure, with pain radiating down her right
12 arm. An EKG revealed widespread ischemia and she was diagnosed with an acute myocardial
13 infarction (MI). J.L. was emergently transported from Kaiser Santa Rosa to Santa Rosa
14 Memorial Hospital for emergency catheterization. It was found on catheterization that she had
15 left main proximal right coronary artery stenoses and depressed ventricular function. A three

16 _____
17 5. Gaviscon is an over-the-counter antacid.

18 6. Darvocet is a trade name for propoxyphene napsylate and acetaminophen tablets. It is
19 indicated for the relief of mild to moderate pain. It is a Schedule IV controlled substance under
20 Health & Safety Code §11057.

21 7. Flexeril is a trade name for cyclobenzaprine hydrochloride and is indicated for the relief
22 of muscle spasm associated with acute painful musculoskeletal conditions. It is a dangerous
23 drug under Bus. & Prof. Code §4022.

24 8. Toradol is a trade name for ketorolac tromethamine injection. It is indicated for the
25 short-term management of moderately severe acute pain that requires analgesia at the opioid
26 level. It is a potent non-steroidal anti-inflammatory drug (NSAID) that is contraindicated for
27 ulcer patients. It is a dangerous drug under Bus. & Prof. Code §4022.

28 9. Morphine sulfate is an opioid analgesic indicated for the relief of moderate to severe
pain. It is a Schedule II controlled substance under Health & Safety Code §11055.

10 10. Relafen is a trade name for nabumetone, a non-steroidal anti-inflammatory drug
(NSAID) that is indicated for the treatment of pain and inflammation associated with arthritis. It
is a dangerous drug under Bus. & Prof. Code §4022.

1 vessel coronary artery bypass graft procedure was performed in the setting of acute coronary
2 syndrome with a depressed left ventricular ejection fraction (LVEF) of 25% and cardiogenic
3 shock. Postoperatively, J.L. arrested several times, and an automatic internal cardioverter
4 defibrillator (AICD) was implanted.

5 8. Respondent's license is subject to discipline and respondent is guilty of
6 unprofessional conduct in violation of Section 2234(b) and/or (c) and/or (d) of the Code in that
7 respondent was grossly negligent and/or committed repeated negligent acts and/or was
8 incompetent in his care and treatment of J.L., including but not limited to the following:

9 A. At the initial visit on December 20, 2004, a history and physical
10 examination was performed by another physician, and appropriate information and
11 tests were obtained to work up a possible cardiac etiology for J.L.'s chest pain.
12 Respondent, on the second visit of December 30, 2004 failed to follow up on the
13 possible cardiac etiologies (such as angina) for J.L.'s acute chest pain radiating down her
14 arm. Questions asked were appropriate for a diagnosis of GERD, and no questions were
15 asked regarding cardiac status.

16 B. At the visit of January 3, 2005, even though J.L. now complained of
17 massive chest pain and her chest was tender to palpation, respondent failed to follow
18 up or consider cardiac etiologies for the pain and did no further cardiac workup.

19 C. Even though the CBC done on December 20, 2004 indicated a
20 high fasting glucose level, respondent failed to order a glucose tolerance test for J.L.

21 D. At the visit of January 6, 2005, even though chest pain continued such
22 that respondent prescribed morphine sulfate, Relafen, and Darvocet for the pain, he failed
23 to follow up on or consider cardiac etiologies for the pain and did no further cardiac
24 workup.

25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein
27 alleged, and that following the hearing, the Administrative Law Judge issue a decision:

28 //

- 1 1. Revoking or suspending Physician's and Surgeon's Certificate No. G
2 61169, issued to Michael Alan Sweeney, M.D.
3 2. Revoking, suspending or denying approval of respondent's authority to
4 supervise physician's assistants, pursuant to section 3527 of the Code;
5 3. Ordering respondent, if placed on probation, to pay the costs of probation
6 monitoring;
7 4. Taking such other and further action as deemed necessary and proper.

8 DATED: February 20, 2008

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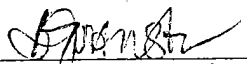
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BARBARA JOHNSTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant